

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE N. JOHNSON, JR. and U.S. POSTAL SERVICE,
HUNTRIDGE STATION, Las Vegas, Nev.

*Docket No. 96-1829; Submitted on the Record;
Issued August 13, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an emotional condition in the performance of duty causally related to compensable factors of his federal employment.

On August 7, 1995 appellant, then a 48-year-old letter carrier, filed a claim alleging that on that day he sustained an acute stress disorder as a result of his federal employment. In a narrative statement, appellant further discussed his claim and indicated that his condition was caused by harassment from his supervisor, Mr. Larry Chandler. Appellant stated that on August 7, 1995, in part due to the fact that this was his first day back to work after a vacation, appellant had several duties to perform in addition to his regular route, including cleaning up residual mail, checking new change of address forms and attending to several matters of union business in his capacity as a union steward. Appellant explained that he feared that as a result of these additional demands on his time, he would not be able to complete his route in the time allotted and, therefore, submitted a PS Form 3996 requesting 2.25 hours of auxiliary assistance. Appellant alleged that after he submitted his properly completed request form, Mr. Chandler approached him and told him that his request was "unacceptable" and refused to either accept an explanation or authorize the use of overtime to complete the route. Appellant stated that when he questioned Mr. Chandler as to how he should proceed, as he felt he would be unable to complete the route in the time allotted, Mr. Chandler only continued to shout "that's unacceptable" and that he should "deliver the mail in an eight-hour day." Appellant alleged that he was so confused by Mr. Chandler's behavior that he could not concentrate enough to complete his tasks and began to feel additional anxiety over whether he would be able to do his job that day. As a result he became nauseated and light headed and developed a pain in his stomach and went home sick. Appellant returned to work on August 23, 1995.

In support of his claim, appellant submitted medical reports, from Dr. William B. Pike, his treating psychiatrist, dating from August 7 through August 22, 1995, in which the physician diagnosed acute stress disorder caused by supervisory harassment at work.

In response to appellant's allegations, Mr. Chandler, appellant's supervisor, submitted a narrative statement, in which he stated that he neither shouted at nor harassed appellant, but did question the amount of auxiliary time he had requested. Mr. Chandler explained that contrary to appellant's statement, appellant had not fully completed the PS Form 3996 request for auxiliary leave, but had left incomplete the section asking for an explanation as to why the extra time was needed. Mr. Chandler stated that he asked appellant several times why he needed the extra time, but appellant repeatedly answered, without further explanation: "This is my first day back from vacation, the time I gave is how long it will take." Mr. Chandler stated that at this point, having failed to obtain further explanation, he did tell appellant that his request was unacceptable and declined to approve it. Mr. Chandler emphasized that appellant did not outline the reasons for his request for auxiliary time as he did on his narrative statement accompanying his claim for compensation and stated that had he done so this situation might have been avoided. Mr. Chandler concluded that later on that same morning he finally managed to obtain an explanation from appellant as to why he needed auxiliary time, at which point appellant's request was granted.

In a decision dated October 3, 1995, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to establish that he developed an emotional condition in the performance of duty. The Office found that the incidents alleged constituted administrative or personnel matters and, therefore, were not compensable factors of employment. The Office concluded that even if appellant had established a compensable factor of employment, the medical evidence of record was insufficiently rationalized to establish appellant's claim.

By letter dated April 17, 1996, appellant requested reconsideration of the Office's decision and submitted additional medical evidence from Dr. Pike in support of his request.

In a decision dated April 25, 1996, the Office declined to reopen appellant's claim. The Office specifically found that as appellant's claim was denied for failure to establish any compensable factors of employment, the additional medical evidence submitted on reconsideration was irrelevant to this issue and, therefore, was not sufficient to warrant merit review of the prior decision.

The Board has reviewed the record and finds that appellant has not established an employment-related emotional condition.

The initial question presented in an emotional condition claim is whether appellant has alleged and substantiated compensable factors of employment as contributing to his condition. Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of workers' compensation. These injuries occur in the course of the employment and have some kind of causal connection with it but nevertheless are not covered because they are found not to have arisen out of the employment. Disability is not covered where it results from an employee's frustration over not being permitted to work in a particular environment or to hold a particular position, or secure a promotion. On the other hand, where disability results from an employee's emotional reaction to his regular or specially assigned work duties or to a

requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he claims compensation was caused or adversely affected by factors of his federal employment.² To establish his claim that he sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his condition; (2) medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.³

In the present case, appellant has not substantiated a compensable factor of employment. The general standard for allegations involving administrative or personnel matters is that although these are related to employment, they are primarily duties of the employer rather than regular duties of the employee. In order to establish a compensable factor, there must be evidence of error or abuse by the employing establishment.⁴ While harassment may constitute abuse, in order for acts to constitute harassment, giving rise to coverage under the Act there must be some evidence that such acts of harassment did in fact occur. Mere perceptions of harassment are not compensable.⁵ Appellant has alleged abusive behavior and harassment by a supervisor, but he has not provided any supporting evidence to substantiate this allegation. Each allegation made by appellant was specifically denied by Mr. Chandler, who offered his own explanations as to why his actions were reasonable and appropriate. The statements of Mr. Chandler are of at least equal probative value as the statements of appellant and without supporting documentary evidence appellant has not established by a preponderance of the evidence that Mr. Chandler harassed him, shouted at him or otherwise failed to act in a manner reasonable and appropriate to his role as a manager.⁶

The Board accordingly finds that appellant has not alleged and substantiated a compensable factor of employment and the Office properly denied his claim. Since no compensable factor of employment has been established, the Board will not address the medical evidence.⁷

The decisions of the Office of Workers' Compensation Programs dated April 25, 1996 and October 3, 1995 are affirmed.

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Pamela R. Rice*, 38 ECAB 838 (1987).

³ *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁴ *See Donald E. Ewals*, 45 ECAB 111 (1993).

⁵ *See Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

⁶ *See Anthony A. Zarcone*, 44 ECAB 751 (1993).

⁷ *Margaret S. Krzycki*, 43 ECAB 496 (1992).

Dated, Washington, D.C.
August 13, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member